

REFERENCE TITLE: first degree murder; juveniles; sentencing

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2008

HB 2293

Introduced by
Representatives Sinema: Ableser, Bradley, Campbell CH, Gallardo, Lopes,
Lujan, Meza, Miranda B, Prezelski

AN ACT

AMENDING SECTION 13-703, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-703.06; AMENDING SECTION 13-1105, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-703, Arizona Revised Statutes, is amended to read:

13-703. Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder as ~~defined in~~ PRESCRIBED BY section 13-1105, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for life or natural life as determined and in accordance with the procedures provided in section 13-703.01. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis. If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

B. At the aggravation phase of the sentencing proceeding that is held pursuant to section 13-703.01, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials. The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution. The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.

C. At the penalty phase of the sentencing proceeding that is held pursuant to section 13-703.01, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility under the rules governing admission of evidence at criminal trials. The burden of establishing the existence of the mitigating circumstances included in subsection G of this section is on the defendant. The defendant must prove the existence of the mitigating circumstances by a preponderance of the evidence. If the trier of fact is a jury, the jurors do not have to agree unanimously that a mitigating circumstance has been proven to exist. Each juror may consider any mitigating circumstance found by that juror in determining the appropriate penalty.

D. Evidence that is admitted at the trial and that relates to any aggravating or mitigating circumstances shall be deemed admitted as evidence at a sentencing proceeding if the trier of fact considering that evidence is the same trier of fact that determined the defendant's guilt. The prosecution and the defendant shall be permitted to rebut any information received at the aggravation or penalty phase of the sentencing proceeding and

1 shall be given fair opportunity to present argument as to whether the
2 information is sufficient to establish the existence of any of the
3 circumstances included in subsections F and G of this section.

4 E. In determining whether to impose a sentence of death or life
5 imprisonment, the trier of fact shall take into account the aggravating and
6 mitigating circumstances that have been proven. The trier of fact shall
7 impose a sentence of death if the trier of fact finds one or more of the
8 aggravating circumstances enumerated in subsection F of this section and then
9 determines that there are no mitigating circumstances sufficiently
10 substantial to call for leniency.

11 F. The trier of fact shall consider the following aggravating
12 circumstances in determining whether to impose a sentence of death:

13 1. The defendant has been convicted of another offense in the United
14 States for which under Arizona law a sentence of life imprisonment or death
15 was imposable.

16 2. The defendant has been or was previously convicted of a serious
17 offense, whether preparatory or completed. Convictions for serious offenses
18 committed on the same occasion as the homicide, or not committed on the same
19 occasion but consolidated for trial with the homicide, shall be treated as a
20 serious offense under this paragraph.

21 3. In the commission of the offense the defendant knowingly created a
22 grave risk of death to another person or persons in addition to the person
23 murdered during the commission of the offense.

24 4. The defendant procured the commission of the offense by payment, or
25 promise of payment, of anything of pecuniary value.

26 5. The defendant committed the offense as consideration for the
27 receipt, or in expectation of the receipt, of anything of pecuniary value.

28 6. The defendant committed the offense in an especially heinous, cruel
29 or depraved manner.

30 7. The defendant committed the offense while:

31 (a) In the custody of or on authorized or unauthorized release from
32 the state department of corrections, a law enforcement agency or a county or
33 city jail.

34 (b) On probation for a felony offense.

35 8. The defendant has been convicted of one or more other homicides, as
36 defined in section 13-1101, that were committed during the commission of the
37 offense.

38 9. The defendant was an adult at the time the offense was committed ~~or~~
39 ~~was tried as an adult~~ and the murdered person was under fifteen years of age,
40 was an unborn child in the womb at any stage of its development or was
41 seventy years of age or older.

42 10. The murdered person was an on duty peace officer who was killed in
43 the course of performing the officer's official duties and the defendant
44 knew, or should have known, that the murdered person was a peace officer.

1 11. The defendant committed the offense with the intent to promote,
2 further or assist the objectives of a criminal street gang or criminal
3 syndicate or to join a criminal street gang or criminal syndicate.

4 12. The defendant committed the offense to prevent a person's
5 cooperation with an official law enforcement investigation, to prevent a
6 person's testimony in a court proceeding, in retaliation for a person's
7 cooperation with an official law enforcement investigation or in retaliation
8 for a person's testimony in a court proceeding.

9 13. The offense was committed in a cold, calculated manner without
10 pretense of moral or legal justification.

11 14. The defendant used a remote stun gun or an authorized remote stun
12 gun in the commission of the offense. For the purposes of this paragraph:

13 (a) "Authorized remote stun gun" means a remote stun gun that has all
14 of the following:

15 (i) An electrical discharge that is less than one hundred thousand
16 volts and less than nine joules of energy per pulse.

17 (ii) A serial or identification number on all projectiles that are
18 discharged from the remote stun gun.

19 (iii) An identification and tracking system that, on deployment of
20 remote electrodes, disperses coded material that is traceable to the
21 purchaser through records that are kept by the manufacturer on all remote
22 stun guns and all individual cartridges sold.

23 (iv) A training program that is offered by the manufacturer.

24 (b) "Remote stun gun" means an electronic device that emits an
25 electrical charge and that is designed and primarily employed to incapacitate
26 a person or animal either through contact with electrodes on the device
27 itself or remotely through wired probes that are attached to the device or
28 through a spark, plasma, ionization or other conductive means emitting from
29 the device.

30 G. The trier of fact shall consider as mitigating circumstances any
31 factors proffered by the defendant or the state that are relevant in
32 determining whether to impose a sentence less than death, including any
33 aspect of the defendant's character, propensities or record and any of the
34 circumstances of the offense, including but not limited to the following:

35 1. The defendant's capacity to appreciate the wrongfulness of his
36 conduct or to conform his conduct to the requirements of law was
37 significantly impaired, but not so impaired as to constitute a defense to
38 prosecution.

39 2. The defendant was under unusual and substantial duress, although
40 not such as to constitute a defense to prosecution.

41 3. The defendant was legally accountable for the conduct of another
42 under the provisions of section 13-303, but his participation was relatively
43 minor, although not so minor as to constitute a defense to prosecution.

44 4. The defendant could not reasonably have foreseen that his conduct
45 in the course of the commission of the offense for which the defendant was

1 convicted would cause, or would create a grave risk of causing, death to
2 another person.

3 5. The defendant's age.

4 H. For purposes of determining whether a conviction of any dangerous
5 crime against children is a serious offense pursuant to this section, an
6 unborn child shall be treated like a minor who is under twelve years of age.

7 I. For the purposes of this section, "serious offense" means any of
8 the following offenses if committed in this state or any offense committed
9 outside this state that if committed in this state would constitute one of
10 the following offenses:

11 1. First degree murder.

12 2. Second degree murder.

13 3. Manslaughter.

14 4. Aggravated assault resulting in serious physical injury or
15 committed by the use, threatened use or exhibition of a deadly weapon or
16 dangerous instrument.

17 5. Sexual assault.

18 6. Any dangerous crime against children.

19 7. Arson of an occupied structure.

20 8. Robbery.

21 9. Burglary in the first degree.

22 10. Kidnapping.

23 11. Sexual conduct with a minor under fifteen years of age.

24 12. Burglary in the second degree.

25 13. Terrorism.

26 Sec. 2. Title 13, chapter 7, Arizona Revised Statutes, is amended by
27 adding section 13-703.06, to read:

28 13-703.06. Sentence of life imprisonment; juveniles

29 NOTWITHSTANDING SECTIONS 13-703 AND 13-703.01, IF A DEFENDANT WAS UNDER
30 EIGHTEEN YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE AND THE
31 DEFENDANT IS TRIED AS AN ADULT AND IS CONVICTED OF FIRST DEGREE MURDER AS
32 PRESCRIBED BY SECTION 13-1105, THE DEFENDANT SHALL BE SENTENCED TO
33 IMPRISONMENT IN THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS FOR LIFE
34 AND SHALL NOT BE RELEASED ON ANY BASIS UNTIL THE COMPLETION OF THE SERVICE OF
35 TWENTY-FIVE CALENDAR YEARS.

36 Sec. 3. Section 13-1105, Arizona Revised Statutes, is amended to read:

37 13-1105. First degree murder; classification

38 A. A person commits first degree murder if:

39 1. Intending or knowing that the person's conduct will cause death,
40 the person causes the death of another person, including an unborn child,
41 with premeditation or, as a result of causing the death of another person
42 with premeditation, causes the death of an unborn child.

43 2. Acting either alone or with one or more other persons the person
44 commits or attempts to commit sexual conduct with a minor under section
45 13-1405, sexual assault under section 13-1406, molestation of a child under

1 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under
 2 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under
 3 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under
 4 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory
 5 threshold amount for each offense or combination of offenses, involving or
 6 using minors in drug offenses under section 13-3409, kidnapping under section
 7 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under
 8 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or
 9 13-1904, escape under section 13-2503 or 13-2504, child abuse under section
 10 13-3623, subsection A, paragraph 1, ~~or~~ or unlawful flight from a pursuing law
 11 enforcement vehicle under section 28-622.01 and, in the course of and in
 12 furtherance of the offense or immediate flight from the offense, the person
 13 or another person causes the death of any person.

14 3. Intending or knowing that the person's conduct will cause death to
 15 a law enforcement officer, the person causes the death of a law enforcement
 16 officer who is in the line of duty.

17 B. Homicide, as prescribed in subsection A, paragraph 2 of this
 18 section, requires no specific mental state other than what is required for
 19 the commission of any of the enumerated felonies.

20 C. An offense under subsection A, paragraph 1 of this section applies
 21 to an unborn child in the womb at any stage of its development. A person
 22 shall not be prosecuted under subsection A, paragraph 1 of this section if
 23 any of the following applies:

24 1. The person was performing an abortion for which the consent of the
 25 pregnant woman, or a person authorized by law to act on the pregnant woman's
 26 behalf, has been obtained or for which the consent was implied or authorized
 27 by law.

28 2. The person was performing medical treatment on the pregnant woman
 29 or the pregnant woman's unborn child.

30 3. The person was the unborn child's mother.

31 D. First degree murder is a class 1 felony and is punishable by death
 32 or life imprisonment as provided by sections 13-703 and 13-703.01 OR AS
 33 PROVIDED BY SECTION 13-703.06.